



1 identification of investment credit property; prescribing  
2 treatment for failure to keep records of certified eligible  
3 safety property; specifying tax credit review and  
4 accountability requirements; specifying requirement for  
5 disclosure of tax credits; authorizing rules; providing for  
6 termination of tax credit; providing for increased and new  
7 fees on coal mining operators by the Division of Mining and  
8 Reclamation; providing for and requiring certain permits and  
9 applications relating to coal mining; amending the duties of  
10 the Director of the West Virginia Office of Miners' Health,  
11 Safety and Training; and amending the duties of the Mine  
12 Safety Technology Task Force.

13 *Be it enacted by the Legislature of West Virginia:*

14 That the Code of West Virginia, 1931, as amended, be amended  
15 by adding thereto a new article, designated §11-13BB-1, §11-13BB-2,  
16 §11-13BB-3, §11-13BB-4, §11-13BB-5, §11-13BB-6, §11-13BB-7, §11-  
17 13BB-8, §11-13BB-9, §11-13BB-10, §11-13BB-11, §11-13BB-12, §11-  
18 13BB-13 and §11-13BB-14; that §22-3-7, §22-3-8 and §22-3-19 of said  
19 code be amended and reenacted; that §22A-1-4 of said code be  
20 amended and reenacted; and that §22A-11-3 of said code be amended  
21 and reenacted, all to read as follows:

22 **CHAPTER 11. TAXATION.**

23 **ARTICLE 13BB. WEST VIRGINIA INNOVATIVE MINE SAFETY TECHNOLOGY TAX**  
24 **CREDIT ACT.**

1     **§11-13BB-1. Short title.**

2             This article may be cited as the "West Virginia Innovative  
3     Mine Safety Technology Tax Credit Act".

4     **§11-13BB-2. Legislative findings and purpose.**

5             The Legislature finds that the encouragement of new investment  
6     in innovative coal mine safety technology in this state is in the  
7     public interest and promotes the general welfare of the people of  
8     this state.

9     **§11-13BB-3. Definitions.**

10            (a) Any term used in this article has the meaning ascribed by  
11     this section, unless a different meaning is clearly required by the  
12     context of its use or by definition in this article.

13            (b) For purposes of this article, the term:

14            (1) "Certified eligible safety property" means eligible safety  
15     property in which an eligible taxpayer has made qualified  
16     investment for which credit has been certified under this article.

17            (2) "Coal mining company" means:

18            (A) Any person subject to tax imposed on the severance of coal  
19     by section three, article thirteen-a of this chapter, or

20            (B) Any person working as a contract miner of coal, which  
21     mines coal in this state, under contract with a person subject to  
22     tax imposed on the severance of coal by section three, article  
23     thirteen-a of this chapter.

24            (3) "Director" means the Director of the Office of Miners'

1 Health, Safety and Training or West Virginia Office of Miners'  
2 Health, Safety and Training established under article one, chapter  
3 twenty two-a of this code.

4 (4) "Eligible safety property" means safety technology  
5 equipment, that at the time of acquisition, is on the list of  
6 approved innovative mine safety technology.

7 (5) "Eligible taxpayer" means a coal mining company which  
8 purchases eligible safety property.

9 (6) "List of approved innovative mine safety technology" means  
10 the list required to be compiled and maintained by the Mine Safety  
11 Technology Task Force and approved and published by the director  
12 under this article.

13 (7) "Office of Miners' Health, Safety and Training" or "West  
14 Virginia Office of Miners' Health, Safety and Training" means the  
15 Office of Miners' Health, Safety and Training established under  
16 article one, chapter twenty two-a of this code.

17 (8) "Person" includes any corporation, limited liability  
18 company, or partnership.

19 (9) "Qualified investment" means the eligible taxpayer's  
20 investment in eligible safety property pursuant to a qualified  
21 purchase as qualified and limited by section six of this article.

22 (10) "Qualified purchase" means and includes only acquisitions  
23 of eligible safety property for use in this state.

24 (A) A lease of eligible safety property may constitute a

1 qualified purchase if the lease was entered into and became  
2 effective at a time when the equipment is on the list of approved  
3 innovative mine safety technology, and if the primary term of the  
4 lease for the eligible safety property is five years or more.  
5 Leases having a primary term of less than five years do not  
6 qualify.

7 (B) "Qualified purchase" does not include:

8 (i) Purchases or leases of realty or any cost for, or related  
9 to, the construction of any building, facility or structure  
10 attached to realty;

11 (ii) Purchases or leases of any property not exclusively used  
12 in West Virginia;

13 (iii) Repair costs including materials used in the repair,  
14 unless for federal income tax purposes, the cost of the repair must  
15 be capitalized and not expensed;

16 (iv) Motor vehicles licensed by the Department of Motor  
17 Vehicles;

18 (v) Clothing;

19 (vi) Airplanes;

20 (vii) Off-premises transportation equipment;

21 (viii) Leases of tangible personal property having a primary  
22 term of less than five years shall not qualify;

23 (ix) Property that is used outside this state; and

24 (x) Property that is acquired incident to the purchase of the

1 stock or assets of an industrial taxpayer, which property was or  
2 had been used by the seller in his or her industrial business in  
3 this state, or in which investment was previously the basis of a  
4 credit against tax taken under any other article of this chapter.

5 (C) Acquisitions, including leases, of eligible safety  
6 property may constitute qualified purchases for purposes of this  
7 article only if:

8 (i) The property is not acquired from a person whose  
9 relationship to the person acquiring it would result in the  
10 disallowance of deductions under Section 267 or 707(b) of the  
11 United States Internal Revenue Code of 1986, as amended;

12 (ii) The property is not acquired from a related person or by  
13 one component member of a controlled group from another component  
14 member of the same controlled group. The Tax Commissioner may  
15 waive this requirement if the property was acquired from a related  
16 party for its then fair market value; and

17 (iii) The basis of the property for federal income tax  
18 purposes, in the hands of the person acquiring it, is not  
19 determined, in whole or in part, by reference to the federal  
20 adjusted basis of the property in the hands of the person from whom  
21 it was acquired; or under Section 1014(e) of the United States  
22 Internal Revenue Code of 1986, as amended.

23 (11) "Safety technology" means depreciable tangible personal  
24 property and equipment, other than clothing, principally designed

1 to directly minimize workplace injuries and fatalities in coal  
2 mines.

3 (12) "Taxpayer" means any person subject to any of the taxes  
4 imposed by article thirteen-a, twenty-three or twenty-four of this  
5 chapter.

6 **§11-13BB-4. List of approved innovative mine safety technology.**

7 (a) *List of approved innovative mine safety technology.* -- The  
8 Mine Safety Technology Task Force, established in section two,  
9 article eleven, chapter twenty-two-a of this code, shall annually  
10 compile a proposed list of approved innovative mine safety  
11 technologies as required by subsection (g), section three, article  
12 eleven, chapter twenty-two-a of this code. The list shall be  
13 transmitted to the director for approval. The director has thirty  
14 days to approve or amend the list. At the expiration of thirty  
15 days, the director shall publish the list of approved innovative  
16 mine safety technologies. The list shall describe and specifically  
17 identify safety equipment for use in West Virginia coal mines  
18 which, in the fiscal year when the equipment is added to the list,  
19 is not required by the Mine Safety and Health Administration of the  
20 United States Department of Labor or the West Virginia Office Of  
21 Miners' Health, Safety And Training or any other state or federal  
22 agency, to be used in a coal mine or on a mine site or on any other  
23 industrial site. Safety equipment shall remain on the list from  
24 year to year until the director removes it from the list. The

1 Office of Miners' Health, Safety and Training may establish by  
2 legislative rule or interpretive rule a shorter time period for  
3 issuance of and updating of the list of approved innovative mine  
4 safety technologies.

5 (b) It is the intent of the Legislature that the list of  
6 approved innovative mine safety technologies include only safety  
7 equipment that is depreciable tangible personal property for  
8 federal income tax purposes, which is so new to the industry and so  
9 innovative in concept, design, operation or performance that, in  
10 the fiscal year when it is added to the list of approved innovative  
11 mine safety technologies, the equipment has not yet been adopted by  
12 the Federal Mine Safety and Health Administration or the West  
13 Virginia Office of Miners Health, Safety and Training or any other  
14 state or federal agency as required equipment to be used in a coal  
15 mine or on a mine site or on any other industrial site.

16 (c) *Delisting.* -- (1) If any item of equipment or any line of  
17 equipment or class of equipment is listed on the list of approved  
18 innovative mine safety technologies in any fiscal year, but then is  
19 subsequently adopted by the Federal Mine Safety and Health  
20 Administration or the West Virginia Office of Mine Safety or any  
21 other state or federal agency as required equipment to be used in  
22 a coal mine or on a mine site or on any other industrial site, the  
23 equipment shall be removed from the list of approved innovative  
24 mine safety technologies compiled and issued for the next



1 succeeding periodic issuance thereafter of the list of approved  
2 innovative mine safety technologies.

3 (2) If it is determined by the director that any item of  
4 equipment or any line of equipment or class of equipment that is  
5 listed on the list of approved innovative mine safety technology  
6 has ceased to be innovative in concept, design, operation or  
7 performance, or is ineffective, or has failed to meet the  
8 expectations of the Mine Safety Technology Task Force, or has  
9 failed to prove its value in directly minimizing workplace injuries  
10 and fatalities in coal mines, the equipment shall be removed from  
11 the list of approved innovative mine safety technologies that is  
12 compiled and issued for the next succeeding periodic issuance of  
13 the list of approved innovative mine safety technologies after the  
14 determination has been reached.

15 (3) However, any eligible taxpayer who invested in the  
16 equipment as certified eligible safety property during the time the  
17 equipment was lawfully listed on the list of approved innovative  
18 mine safety technologies, shall not forfeit the credit authorized  
19 by this article as a result of the delisting of the equipment under  
20 either subdivision (1) or subdivision (2) of this subsection, so  
21 long as the requirements of this article are otherwise fulfilled by  
22 the taxpayer for entitlement to the credit.

23 **§11-13BB-5. Amount of credit allowed.**

24 (a) *Credit allowed* -- For tax years beginning after

1 December 31, 2011, there is allowed to eligible taxpayers a credit  
2 against the taxes imposed by articles twenty-three and twenty-four  
3 of this chapter. The amount of credit shall be determined as  
4 provided in this section.

5 (b) *Amount of credit allowable.* -- The amount of allowable  
6 credit under this article is equal to fifty percent of the  
7 qualified investment as determined in section six of this article,  
8 and shall reduce the business franchise tax imposed under article  
9 twenty-three of this chapter and the corporation net income tax  
10 imposed under article twenty-four of this chapter, in that order,  
11 subject to the following conditions and limitations:

12 (1) The amount of credit allowable is applied over a five-year  
13 period, at the rate of one-fifth thereof per taxable year,  
14 beginning with the taxable year in which the eligible safety  
15 property is first placed in service or use in this state.

16 (2) *Business franchise tax.* -- The credit is applied to reduce  
17 the business franchise tax imposed under article twenty-three of  
18 this chapter determined after application of the credits against  
19 tax provided in section seventeen, article twenty-three of this  
20 chapter, but before application of any other allowable credits  
21 against tax. The amount of annual credit allowed will not reduce  
22 the business franchise tax, imposed under article twenty-three of  
23 this chapter, below fifty percent of the amount which would be  
24 imposed for the taxable year in the absence of this credit against

1 tax.

2 (3) *Corporation net income tax.* -- After application of  
3 subdivision (2) of this subsection, any unused credit is next  
4 applied to reduce the corporation net income tax imposed under  
5 article twenty-four of this chapter determined before application  
6 of any other allowable credits against tax. The amount of annual  
7 credit allowed will not reduce corporation net income tax, imposed  
8 under article twenty-four of this chapter, below fifty percent of  
9 the amount which would be imposed for the taxable year in the  
10 absence of this credit against tax.

11 (4) *Pass-through entities.* -- (A) If the eligible taxpayer is  
12 a limited liability company, small business corporation or a  
13 partnership, then any unused credit after application of  
14 subdivisions (2) and (3) of this subsection is allowed as a credit  
15 against the taxes imposed by article twenty-four of this chapter on  
16 owners of the eligible taxpayer on the conduit income directly  
17 derived from the eligible taxpayer by its owners. Only those  
18 portions of the tax imposed by article twenty-four of this chapter  
19 that are imposed on income directly derived by the owner from the  
20 eligible taxpayer are subject to offset by this credit.

21 (B) The amount of annual credit allowed will not reduce  
22 corporation net income tax, imposed under article twenty-four of  
23 this chapter, below fifty percent of the amount which would be  
24 imposed on the conduit income directly derived from the eligible

1 taxpayer by each owner for such taxable year in the absence of this  
2 credit against the taxes.

3 (5) Small business corporations, limited liability companies,  
4 partnerships and other unincorporated organizations shall allocate  
5 any unused credit after application of subdivisions (2) and (3) of  
6 this subsection) among their members in the same manner as profits  
7 and losses are allocated for the taxable year; and

8 (6) No credit is allowed under this article against any tax  
9 imposed by article twenty-one of this chapter.

10 (c) No carryover to a subsequent taxable year or carryback to  
11 a prior taxable year is allowed for the amount of any unused  
12 portion of any annual credit allowance. Any unused credit is  
13 forfeited.

14 (d) No tax credit is allowed or may be applied under this  
15 article until the taxpayer seeking to claim the tax credit has:

16 (1) Filed, with the Office of Miners' Health, Safety and  
17 Training, a written application for certification of the proposed  
18 tax credit; and

19 (2) Received, from the Office of Miners' Health, Safety and  
20 Training, certification of the amount of tax credit to be allocated  
21 to the eligible taxpayer.

22 (e) No more than \$2 million of the tax credits allowed under  
23 this article shall be allocated by the Office of Miners' Health,  
24 Safety and Training during any fiscal year. The Office of Miners'

1 Health, Safety and Training shall allocate the tax credits in the  
2 order the applications therefor are received.

3 (f) The total amount of tax credit that may be used in any  
4 taxable year by any eligible taxpayer in combination with the  
5 owners of the eligible taxpayer under this article may not exceed  
6 \$100,000.

7 (g) Applications for certification of the proposed tax credit  
8 shall contain such information and be in such detail and in such  
9 form as required by the Office of Miners' Health, Safety and  
10 Training.

11 (h) The Tax Commissioner may prescribe the forms and schedules  
12 as necessary or appropriate for effective, efficient and lawful  
13 administration of this article.

14 (i) Notwithstanding the provisions of section five-d, article  
15 ten of this chapter, and notwithstanding any other provision of  
16 this code, the Tax Commissioner and Office of Miners' Health,  
17 Safety and Training may exchange tax information and other  
18 information as determined by the Tax Commissioner to be useful and  
19 necessary for the effective oversight and administration of the  
20 credit authorized pursuant to this article.

21 **§11-13BB-6. Qualified investment.**

22 (a) *General.* -- The qualified investment is one hundred  
23 percent of the cost for eligible safety property pursuant to a  
24 qualified purchase, which is placed in service or use in this state

1 by the eligible taxpayer during the tax year.

2 (b) *Placed in service or use.*-- For purposes of the credit  
3 allowed by this article, property is considered placed in service  
4 or use in the earlier of the following taxable years:

5 (1) The taxable year in which, under the taxpayer's  
6 depreciation practice, the period for federal income tax  
7 depreciation with respect to the property begins; or

8 (2) The taxable year in which the property is placed in a  
9 condition or state of readiness and availability for a specifically  
10 assigned function.

11 (c) *Cost.* -- For purposes of this article, the cost for  
12 eligible safety property pursuant to a qualified purchase is  
13 determined under the following rules:

14 (1) *Trade-ins.* -- Cost for eligible safety property will not  
15 include the value of property given in trade or exchange for  
16 eligible safety property pursuant to a qualified purchase;

17 (2) *Damaged, destroyed or stolen property.* -- If eligible  
18 safety property is damaged or destroyed by fire, flood, storm or  
19 other casualty, or is stolen, then the cost for replacement of the  
20 eligible safety property, will not include any insurance proceeds  
21 received in compensation for the loss;

22 (3) *Rental property.* -- The cost for eligible safety property  
23 acquired by lease for a term of at least five years or longer is

1 one hundred percent of the rent reserved for the primary term of  
2 the lease, not to exceed ten years; and

3 (4) *Property purchased for multiple use.* -- Any cost of  
4 acquisition of property that is not principally and directly used  
5 to minimize workplace injuries and fatalities in a coal mine does  
6 not qualify as qualified investment for purposes of this article.

7 **§11-13BB-7. Forfeiture of unused tax credits.**

8 *Disposition of property or cessation of use.* -- If during any  
9 taxable year, property with respect to which a tax credit has been  
10 allowed under this article:

11 (1) Is disposed of prior to the end of the fourth tax year  
12 subsequent to the end of the tax year in which the property was  
13 placed in service or use; or

14 (2) Ceases to be used in a coal mine of the eligible taxpayer  
15 in this state prior to the end of the fourth tax year subsequent to  
16 the end of the tax year in which the property was placed in service  
17 or use, then the unused portion of the credit allowed for such  
18 property is forfeited for the tax year in which the disposition or  
19 cessation of use occurred and all ensuing years.

20 **§11-13BB-8. Transfer of certified eligible safety property to**  
21 **successors.**

22 (a) *Mere change in form of business.* -- Certified eligible  
23 safety property may not be treated as disposed of under section

1 seven of this article, by reason of a mere change in the form of  
2 conducting the business as long as the certified eligible safety  
3 property is retained in a business in this state for use in a coal  
4 mine in West Virginia, and the taxpayer retains a controlling  
5 interest in the successor business. In this event, the successor  
6 business is allowed to claim the amount of credit still available  
7 with respect to the certified eligible safety property transferred,  
8 and the taxpayer (transferor) may not be required to forfeit the  
9 credit for the years remaining at the time of transfer in the  
10 original five year credit period.

11 (b) *Transfer or sale to successor.* -- Certified eligible  
12 safety property will not be treated as disposed of under section  
13 seven of this article by reason of any transfer or sale to a  
14 successor business which continues to use the certified eligible  
15 safety property in a coal mine in West Virginia. Upon transfer or  
16 sale, the successor shall acquire the amount of credit that remains  
17 available under this article in the original five year credit  
18 period for each subsequent taxable year, and the transferor shall  
19 not be required to forfeit the credit for subsequent years. Upon  
20 transfer or sale, the successor shall acquire the amount of credit  
21 that remains available under this article for each taxable year  
22 subsequent to the taxable year of the transferor during which the  
23 transfer occurred and, for the year of transfer, an amount of  
24 annual credit for the year in the same proportion as the number of



1 days remaining in the transferor's taxable year bears to the total  
2 number of days in the taxable year and the transferor shall not be  
3 required to redetermine the amount of credit allowed in earlier  
4 years.

5 **§11-13BB-9. Identification of investment credit property.**

6 Every taxpayer who claims credit under this article shall  
7 maintain sufficient records to establish the following facts for  
8 each item of certified eligible safety property:

- 9 (1) Its identity;
- 10 (2) Its actual or reasonably determined cost;
- 11 (3) Its straight-line depreciation life;
- 12 (4) The month and taxable year in which it was placed in  
13 service;
- 14 (5) The amount of credit taken; and
- 15 (6) The date it was disposed of or otherwise ceased to be  
16 actively and directly used in a coal mine in this state.

17 **§11-13BB-10. Failure to keep records of certified eligible safety**  
18 **property.**

19 A taxpayer who does not keep the records required for  
20 certified eligible safety property and the credit authorized under  
21 this article, is subject to the following rules:

- 22 (1) A taxpayer is treated as having disposed of, during the  
23 taxable year, any certified eligible safety property which the  
24 taxpayer cannot establish was still on hand and used in a coal mine

1 in this state at the end of that year; and

2 (2) If a taxpayer cannot establish when certified eligible  
3 safety property reported for purposes of claiming this credit  
4 returned during the taxable year was placed in service, the  
5 taxpayer is treated as having placed it in service in the most  
6 recent prior year in which similar property was placed in service,  
7 unless the taxpayer can establish that the property placed in  
8 service in the most recent year is still on hand and used in a coal  
9 mine in this state at the end of that year. In that event, the  
10 taxpayer will be treated as having placed the returned property in  
11 service in the next most recent year.

12 **§11-13BB-11. Tax credit review and accountability.**

13 (a) Beginning on August 1, 2012, and August 1 of every year  
14 thereafter, the Tax Commissioner shall submit to the Governor, the  
15 President of the Senate and the Speaker of the House of Delegates  
16 a tax credit review and accountability report evaluating the cost  
17 of the credit allowed under this article during the most recent  
18 period for which information is available. The criteria to be  
19 evaluated includes, but is not limited to, for each year:

20 (1) The numbers of taxpayers claiming the credit; and

21 (2) The cost of the credit.

22 (b) Taxpayers claiming the credit shall provide whatever  
23 information the Tax Commissioner requires to prepare the report:  
24 *Provided, That the information is subject to the confidentiality*

1 and disclosure provisions of sections five-d and five-s, article  
2 ten of this chapter. If, in any reporting period under this  
3 section, fewer than ten eligible taxpayers have taken or applied  
4 for the credit authorized under this article, then no report shall  
5 be filed for that reporting period under this section.

6 **§11-13BB-12. Disclosure of tax credits.**

7 Notwithstanding section five-d, article ten of this chapter or  
8 any other provision in this code to the contrary, the Tax  
9 Commissioner shall annually publish in the State Register the name  
10 and address of every eligible taxpayer and the amount of any tax  
11 credit asserted under this article.

12 **§11-13BB-13. Rules.**

13 The Tax Commissioner and the Office of Miners' Health, Safety  
14 and Training may each promulgate rules in accordance with article  
15 three, chapter twenty-nine-a of this code to carry out the policy  
16 and purposes of this article, to provide any necessary  
17 clarification of the provisions of this article and to efficiently  
18 provide for the general administration of this article.

19 **§11-13BB-14. Termination.**

20 The tax credit authorized in this article shall terminate  
21 December 31, 2014.

22 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

23 **ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

1   **§22-3-7. Notice of intention to prospect, requirements therefor;**  
2                   **bonding; secretary's authority to deny or limit;**  
3                   **postponement of reclamation; prohibited acts;**  
4                   **exceptions.**

5           (a) Any person intending to prospect for coal in an area not  
6 covered by a surface-mining permit, in order to determine the  
7 location, quantity or quality of a natural coal deposit, making  
8 feasibility studies or for any other purpose, shall file with the  
9 secretary, at least fifteen days prior to commencement of any  
10 disturbance associated with prospecting, a notice of intention to  
11 prospect, which notice shall include a description of the  
12 prospecting area, the period of supposed prospecting and any other  
13 information as required by rules promulgated pursuant to this  
14 section: *Provided*, That prior to the commencement of prospecting,  
15 the secretary may issue an order denying or limiting permission to  
16 prospect where the secretary finds that prospecting operations will  
17 damage or destroy a unique natural area, or will cause serious harm  
18 to water quality, or that the operator has failed to satisfactorily  
19 reclaim other prospecting sites, or that there has been an abuse of  
20 prospecting by previous prospecting operations in the area.

21           (b) Notice of intention to prospect shall be made in writing  
22 on forms prescribed by the secretary and shall be signed and  
23 verified by the applicant. The notice shall be accompanied by: (1)

1 A United States Geological Survey topographic map showing by proper  
2 marking the crop line and the name, where known, of the seam or  
3 seams to be prospected; (2) a filing fee of \$2000; and (3) a bond,  
4 or cash, or collateral securities or certificates of the same type  
5 and form and in the same manner as provided in section eleven of  
6 this article, in the amount of five hundred dollars per acre or  
7 fraction thereof for the total estimated disturbed area. If a bond  
8 is used, it shall be payable to the State of West Virginia and  
9 conditioned that the operator faithfully perform the requirements  
10 of this article as they relate to backfilling and revegetation of  
11 the disturbed area.

12 (c) Any person prospecting under the provisions of this  
13 section shall ensure that the prospecting operation is conducted in  
14 accordance with the performance standards in section thirteen of  
15 this article for all lands disturbed in explorations, including  
16 excavations, roads, drill holes, and the removal of necessary  
17 facilities and equipment.

18 (d) Information submitted to the secretary pursuant to this  
19 section as confidential, concerning trade secrets or privileged  
20 commercial or financial information, which relates to the  
21 competitive rights of the person or entity intended to prospect the  
22 described area, is not available for public examination.

23 (e) Any person who conducts any prospecting activities which  
24 substantially disturb the natural land surface in violation of this

1 section or rules issued pursuant thereto is subject to the  
2 provisions of sections sixteen and seventeen of this article.

3 (f) An operator may not remove more than two hundred fifty  
4 tons of coal without the specific written approval of the  
5 secretary. Such approval shall be requested by the operator on  
6 forms prescribed by the secretary. The secretary shall promulgate  
7 rules governing such operations and setting forth information  
8 required in the application for approval. Each such application  
9 shall be accompanied by a \$2000 filing fee.

10 (g) The bond accompanying said notice of intention to prospect  
11 shall be released by the secretary when the operator demonstrates  
12 that a permanent species of vegetative cover is established.

13 (h) If an operator desires to mine the area currently being  
14 prospected, and has requested and received an appropriate surface  
15 mine application (S.M.A.) number, the secretary may permit the  
16 postponement of the reclamation of the area prospected. Any part  
17 of a prospecting operation, where reclamation has not been  
18 postponed as provided above, shall be reclaimed within a period of  
19 three months from disturbance.

20 (i) For the purpose of this section, the word "prospect" or  
21 "prospecting" does not include core drilling related solely to  
22 taxation or highway construction.

23 **§22-3-8. Prohibition of surface mining without a permit; permit**  
24 **requirements; successor in interest; duration of**

1                   **permits; proof of insurance; termination of permits;**  
2                   **permit fees.**

3           (a) No person may engage in surface mining operations unless  
4 he or she has first obtained a permit from the secretary in  
5 accordance with the following:

6           (1) All permits issued pursuant to the requirements of this  
7 article shall be issued for a term not to exceed five years:

8       *Provided,* That if the applicant demonstrates that a specified  
9 longer term is reasonably needed to allow the applicant to obtain  
10 necessary financing for equipment and the opening of the operation,  
11 and if the application is full and complete for the specified  
12 longer term, the secretary may extend a permit for a longer term:

13       *Provided, however,* That subject to the prior approval of the  
14 secretary, with the approval being subject to the provisions of  
15 subsection (c), section eighteen of this article, a successor in  
16 interest to a permittee who applies for a new permit, or transfer  
17 of a permit, within thirty days of succeeding to the interest and  
18 who is able to obtain the bond coverage of the original permittee,  
19 may continue surface mining and reclamation operations according to  
20 the approved mining and reclamation plan of the original permittee  
21 until the successor's permit application or application for  
22 transfer is granted or denied.

23           (2) Proof of insurance is required on an annual basis.

24           (3) A permit terminates if the permittee has not commenced the

1 surface mining operations covered by the permit within three years  
2 of the date the permit was issued: *Provided*, That the secretary  
3 may grant reasonable extensions of time upon a timely showing that  
4 the extensions are necessary by reason of litigation precluding  
5 commencement, or threatening substantial economic loss to the  
6 permittee, or by reason of conditions beyond the control and  
7 without the fault or negligence of the permittee: *Provided*,  
8 however, That with respect to coal to be mined for use in a  
9 synthetic fuel facility or specific major electric-generating  
10 facility, the permittee shall be considered to have commenced  
11 surface mining operations at the time the construction of the  
12 synthetic fuel or generating facility is initiated.

13 (4) Each application for a new surface mining permit filed  
14 pursuant to this article shall be accompanied by a fee of \$3,500.  
15 All permit fees and renewal fees provided in this section or  
16 elsewhere in this article shall be collected by the secretary and  
17 deposited with the Treasurer of the State of West Virginia to the  
18 credit of the Operating Permit Fees Fund and shall be used, upon  
19 requisition of the secretary, for the administration of this  
20 article.

21 (5) Prior to the issuance of any permit, the secretary shall  
22 ascertain from the Commissioner of the Division of Labor whether  
23 the applicant is in compliance with section fourteen, article five,  
24 chapter twenty-one of this code. Upon issuance of the permit, the



1 secretary shall forward a copy to the Commissioner of the Division  
2 of Labor, who shall assure continued compliance under the permit.

3 (6) (A) Prior to the issuance of any permit the secretary  
4 shall ascertain from the Executive Director of Workforce West  
5 Virginia and the Insurance Commissioner whether the applicant is in  
6 compliance with the provisions of section six-c, article two,  
7 chapter twenty-one-a of this code and section five, article two,  
8 chapter twenty-three of this code with regard to any required  
9 subscription to the Unemployment Compensation Fund or to the  
10 Workers' Compensation Fund, the payment of premiums and other  
11 charges to the fund, the timely filing of payroll reports and the  
12 maintenance of adequate deposits. If the applicant is delinquent  
13 or defaulted, or has been terminated by the executive director or  
14 the Insurance Commissioner, the permit may not be issued until the  
15 applicant returns to compliance or is restored by the executive  
16 director or the Insurance Commissioner under a reinstatement  
17 agreement: *Provided*, That in all inquiries the Executive Director  
18 of Workforce West Virginia and the Insurance Commissioner shall  
19 make response to the Department of Environmental Protection within  
20 fifteen calendar days; otherwise, failure to respond timely is  
21 considered to indicate the applicant is in compliance and the  
22 failure will not be used to preclude issuance of the permit.

23 (B) It is a requirement of this article that each operator  
24 maintain continued compliance with the provisions of section five,

1 article two, chapter twenty-three of this code and section six-c,  
2 article two, chapter twenty-one-a of this code and provide proof of  
3 compliance to the secretary on a quarterly basis.

4 **§22-3-19. Permit revision and renewal requirements; incidental**  
5 **boundary revisions; requirements for transfer;**  
6 **assignment and sale of permit rights; operator**  
7 **reassignment; and procedures to obtain inactive**  
8 **status.**

9 (a) (1) Any valid permit issued pursuant to this article  
10 carries with it the right of successive renewal upon expiration  
11 with respect to areas within the boundaries of the existing permit.  
12 The holders of the permit may apply for renewal and the renewal  
13 shall be issued: *Provided*, That on application for renewal, the  
14 burden is on the opponents of renewal, unless it is established  
15 that and written findings by the secretary are made that: (A) The  
16 terms and conditions of the existing permit are not being  
17 satisfactorily met: *Provided, however*, That if the permittee is  
18 required to modify operations pursuant to mining or reclamation  
19 requirements which become applicable after the original date of  
20 permit issuance, the permittee shall be provided an opportunity to  
21 submit a schedule allowing a reasonable period to comply with such  
22 revised requirements; (B) the present surface-mining operation is  
23 not in compliance with the applicable environmental protection

standards of this article; (C) the renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas; (D) the operator has not provided evidence that the bond in effect for said operation will continue in effect for any renewal requested as required pursuant to sections eleven or twelve of this article; or (E) any additional revised or updated information as required pursuant to rules promulgated by the secretary has not been provided.

(2) If an application for renewal of a valid permit includes a proposal to extend the surface-mining operation beyond the boundaries authorized in the existing permit, that portion of the application for renewal which addresses any new land area is subject to the full standards of this article, which includes, but is not limited to: (A) Adequate bond; (B) a map showing the disturbed area and facilities; and (C) a reclamation plan.

(3) Any permit renewal shall be for a term not to exceed the period of time for which the original permit was issued. Application for permit renewal shall be made at least one hundred twenty days prior to the expiration of the valid permit.

(4) Any renewal application for an active permit shall be on forms prescribed by the secretary and shall be accompanied by a filing fee of \$3,000. The application shall contain such information as the secretary requires pursuant to rule.

(b) (1) During the term of the permit, the permittee may submit

1 to the secretary an application for a revision of the permit,  
2 together with a revised reclamation plan.

3 (2) An application for a significant revision of a permit is  
4 subject to all requirements of this article and rules promulgated  
5 pursuant thereto and shall be accompanied by a filing fee of \$2000.

6 (3) Any extension to an area already covered by the permit,  
7 except incidental boundary revisions, shall be made by application  
8 for another permit. If the permittee desires to add the new area  
9 to his or her existing permit in order to have existing areas and  
10 new areas under one permit, the secretary may so amend the original  
11 permit: *Provided*, That the application for the new area is subject  
12 to all procedures and requirements applicable to applications for  
13 original permits under this article and a filing fee of \$550.

14 (c) The secretary shall review outstanding permits of a five-  
15 year term before the end of the third year of the permit. Other  
16 permits shall be reviewed within the time established by rules.  
17 The secretary may require reasonable revision or modification of  
18 the permit following review: *Provided*, That such revision or  
19 modification shall be based upon written findings and shall be  
20 preceded by notice to the permittee of an opportunity for hearing.

21 (d) No transfer, assignment or sale of the rights granted  
22 under any permit issued pursuant to this article may be made  
23 without the prior written approval of the secretary, application  
24 for which shall be accompanied by a filing fee of \$1,500 for

1 transfer or \$1,500 for assignment.

2 (e) Each request for inactive status shall be submitted on  
3 forms prescribed by the secretary, shall be accompanied by a filing  
4 fee of \$2000, and shall be granted in accordance with the procedure  
5 established in the *Surface Mining and Reclamation Rule*.

6 **CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.**

7 **ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING;**  
8 **ADMINISTRATION; ENFORCEMENT.**

9 **§22A-1-4. Powers and duties of the Director of the Office of**  
10 **Miners' Health, Safety and Training.**

11 (a) The Director of the Office of Miners' Health, Safety and  
12 Training is hereby empowered and it is his or her duty to  
13 administer and enforce such provisions of this chapter relating to  
14 health and safety inspections and enforcement and training in  
15 surface and underground coal mines, underground clay mines, open  
16 pit mines, cement manufacturing plants and underground limestone  
17 and sandstone mines.

18 (b) The Director of the Office of Miners' Health, Safety and  
19 Training has full charge of the division. The director has the  
20 power and duty to:

21 (1) Supervise and direct the execution and enforcement of the  
22 provisions of this article.

23 (2) Employ such assistants, clerks, stenographers and other

1 employees as may be necessary to fully and effectively carry out  
2 his or her responsibilities and fix their compensation, except as  
3 otherwise provided in this article.

4 (3) Assign mine inspectors to divisions or districts in  
5 accordance with the provisions of section eight of this article as  
6 may be necessary to fully and effectively carry out the provisions  
7 of this law, including the training of inspectors for the  
8 specialized requirements of surface mining, shaft and slope sinking  
9 and surface installations and to supervise and direct such mine  
10 inspectors in the performance of their duties.

11 (4) Suspend, for good cause, any such mine inspector without  
12 compensation for a period not exceeding thirty days in any calendar  
13 year.

14 (5) Prepare report forms to be used by mine inspectors in  
15 making their findings, orders and notices, upon inspections made in  
16 accordance with this article.

17 (6) Hear and determine applications made by mine operators for  
18 the annulment or revision of orders made by mine inspectors, and to  
19 make inspections of mines, in accordance with the provisions of  
20 this article.

21 (7) Cause a properly indexed permanent and public record to be  
22 kept of all inspections made by himself or by mine inspectors.

23 (8) Make annually a full and complete written report of the  
24 administration of the office to the Governor and the Legislature of

1 the state for the year ending June 30. The report shall include  
2 the number of visits and inspections of mines in the state by mine  
3 inspectors, the quantity of coal, coke and other minerals  
4 (excluding oil and gas) produced in the state, the number of  
5 individuals employed, number of mines in operation, statistics with  
6 regard to health and safety of persons working in the mines  
7 including the causes of injuries and deaths, improvements made,  
8 prosecutions, the total funds of the office from all sources  
9 identifying each source of such funds, the expenditures of the  
10 office, the surplus or deficit of the office at the beginning and  
11 end of the year, the amount of fines collected, the amount of fines  
12 imposed, the value of fines pending, the number and type of  
13 violations found, the amount of fines imposed, levied and turned  
14 over for collection, the total amount of fines levied but not paid  
15 during the prior year, the titles and salaries of all inspectors  
16 and other officials of the office, the number of inspections made  
17 by each inspector, the number and type of violations found by each  
18 inspector. However, no inspector may be identified by name in this  
19 report. Such reports shall be filed with the Governor and the  
20 Legislature on or before December 31 of the same year for which it  
21 was made, and shall upon proper authority be printed and  
22 distributed to interested persons.

23 (9) Call or subpoena witnesses, for the purpose of conducting  
24 hearings into mine fires, mine explosions or any mine accident; to

1 administer oaths and to require production of any books, papers,  
2 records or other documents relevant or material to any hearing,  
3 investigation or examination of any mine permitted by this chapter.  
4 Any witness so called or subpoenaed shall receive \$40 per diem and  
5 shall receive mileage at the rate of \$0.15 for each mile actually  
6 traveled, which shall be paid out of the State Treasury upon a  
7 requisition upon the State Auditor, properly certified by such  
8 witness.

9 (10) Institute civil actions for relief, including permanent  
10 or temporary injunctions, restraining orders, or any other  
11 appropriate action in the appropriate federal or state court  
12 whenever any operator or the operator's agent violates or fails or  
13 refuses to comply with any lawful order, notice or decision issued  
14 by the director or his or her representative.

15 (11) Perform all other duties which are expressly imposed upon  
16 him or her by the provisions of this chapter.

17 (12) Impose reasonable fees upon applicants taking tests  
18 administered pursuant to the requirements of this chapter.

19 (13) Impose reasonable fees for the issuance of certifications  
20 required under this chapter.

21 (14) Prepare study guides and other forms of publications  
22 relating to mine safety and charge a reasonable fee for the sale of  
23 the publications.

24 (15) Make all records of the office open for inspection of



1 interested persons and the public.

2 (c) The Director of the Office of Miners' Health, Safety and  
3 Training, or his or her designee, upon receipt of the list of  
4 approved innovative mine safety technologies from the Mine Safety  
5 Technology Task force, has thirty days to approve or amend the list  
6 as provided in section four, article thirteen-bb, chapter eleven of  
7 this code. At the expiration of the time period, the director  
8 shall publish the list of approved innovative mine safety  
9 technologies as provided in section four, article thirteen-bb,  
10 chapter eleven of this code.

11 **ARTICLE 11. MINE SAFETY TECHNOLOGY.**

12 **§22A-11-3. Task force powers and duties.**

13 (a) The task force shall provide technical and other  
14 assistance to the office related to the implementation of the new  
15 technological requirements set forth in the provisions of section  
16 fifty-five, article two of this chapter, as amended and reenacted  
17 during the regular session of the Legislature in 2006 and  
18 requirements for other mine safety technologies.

19 (b) The task force, working in conjunction with the director,  
20 shall continue to study issues regarding the commercial  
21 availability, the functional and operational capability and the  
22 implementation, compliance and enforcement of the following  
23 protective equipment:

24 (1) Self-contained self-rescue devices, as provided in

1 subsection (f), section fifty-five, article two of this chapter;

2 (2) Wireless emergency communication devices, as provided in  
3 subsection (g), section fifty-five, article two of this chapter;

4 (3) Wireless emergency tracking devices, as provided in  
5 subsection (h), section fifty-five, article two of this chapter;  
6 and

7 (4) Any other protective equipment required by this chapter or  
8 rules promulgated in accordance with the law that the director  
9 determines would benefit from the expertise of the task force.

10 (c) The task force shall on a continuous basis study, monitor  
11 and evaluate:

12 (1) The potential for enhancing coal mine health and safety  
13 through the application of existing technologies and techniques;

14 (2) Opportunities for improving the integration of  
15 technologies and procedures to increase the performance and  
16 survivability of coal mine health and safety systems;

17 (3) Emerging technological advances in coal mine health and  
18 safety; and

19 (4) Market forces impacting the development of new  
20 technologies, including issues regarding the costs of research and  
21 development, regulatory certification and incentives designed to  
22 stimulate the marketplace.

23 (d) On or before July 1 of each year, the task force shall  
24 submit a report to the Governor and the board of Coal Mine Health

1 and Safety that shall include, but not be limited to:

2 (1) A comprehensive overview of issues regarding the  
3 implementation of the new technological requirements set forth in  
4 the provisions of section fifty-five, article two of this chapter,  
5 or rules promulgated in accordance with the law;

6 (2) A summary of any emerging technological advances that  
7 would improve coal mine health and safety;

8 (3) Recommendations, if any, for the enactment, repeal or  
9 amendment of any statute which would enhance technological  
10 advancement in coal mine health and safety; and

11 (4) Any other information the task force considers  
12 appropriate.

13 (e) In performing its duties, the task force shall, where  
14 possible, consult with, among others, mine engineering and mine  
15 safety experts, radiocommunication and telemetry experts and  
16 relevant state and federal regulatory personnel.

17 (f) Appropriations to the task force commission and to  
18 effectuate the purposes of this article shall be made to one or  
19 more budget accounts established for that purpose.

20 (g) The task force shall annually compile a proposed list of  
21 approved innovative mine safety technologies and transmit the list  
22 to the Director of the Office of Miners' Health, Safety and  
23 Training as provided in section four, article thirteen-BB, chapter  
24 eleven of this code. The list shall be approved by unanimous vote

1 of the task force.